

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID CORDISH
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202

THE CORDISH COMPANY
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202

Plaintiffs

v.

FRANK PARLATO, JR.
8080 Tonawanda Creek Rd.
Clarence, New York 14051

NIAGARA ROAR PUBLICATIONS, INC.
d/b/a NIAGARA FALLS REPORTER
1625 Buffalo Avenue, Suite 2A
Niagara Falls, New York 14303

Defendants

COMPLAINT

Case No.: _____

JURY DEMANDED

Plaintiff DAVID CORDISH and THE CORDISH COMPANY by and through his counsel Duke, Holzman, Photiadis & Gresens LLP, as and for his Complaint, states and alleges as follows:

PARTIES

1. Plaintiff David Cordish is an individual residing in Baltimore, Maryland.
2. Plaintiff The Cordish Company is a Maryland corporation which maintains a principal office for the transaction of business in Baltimore, Maryland.
3. Defendant Frank Parlato, Jr. ("Parlato") is an individual residing in Clarence, New York.

4. Defendant Niagara Roar Publications, Inc. d/b/a Niagara Falls Reporter (“NF Reporter”) is a New York corporation which maintains a principal place of business in Niagara Falls, New York.

5. Plaintiffs are in the business of real estate development nationally and have completed numerous major real estate development and re-development projects throughout the United States. Plaintiff David Cordish is an officer of The Cordish Company.

6. Plaintiffs regularly participate in public-private funded and partnered development and re-development projects.

7. Upon information and belief, defendant Parlato owns and operates (directly or indirectly) commercial properties in Niagara Falls, New York, at least one of which is utilized as a pay parking lot.

8. Upon information and belief, the NF Reporter produces, publishes, issues and disseminates weekly newspapers.

9. Upon information and belief, NF Reporter newspaper articles and publications are published, disseminated and available globally in electronic form via the internet.

10. Upon information and belief, NF Reporter newspaper articles and publications are published, disseminated and available in paper form throughout Western New York and other geographic regions.

JURISDICTION AND VENUE

11. Plaintiff is a resident and citizen of the State of Maryland. Defendants are residents and citizens of the State of New York. This action is therefore between residents of different states.

12. The amount in controversy, exclusive of interest and costs, exceeds the \$75,000.00 jurisdictional requirements of this Court.

13. Pursuant to 28 U.S.C. § 1332 this Court has subject matter jurisdiction.

14. Venue is proper in this District under 28 U.S.C. § 1391 as the defendants reside within this District, a substantial part of the events giving rise to the claim occurred in this District and the Defendants are subject to personal jurisdiction in this District due to their conducting business and residence in this District.

CAUSE OF ACTION – DEFAMATION/LIBEL

15. Plaintiff repeats and realleges all paragraphs set forth above.

16. On April 6, 2010, the NF Reporter published, issued and disseminated an article entitled: “Cordish Tenant Guido Defies City” (hereinafter the “4/6/10 Article”).

17. On April 13, 2010, the NF Reporter published, issued and disseminated an article entitled: “Guido Rebuts While Cordish Deceives City” (hereinafter the “4/13/10 Article”).

18. The 4/6/10 Article and the 4/13/10 Article concern the same subject matter (the 4/6/10 Article and the 4/13/10 Article are collectively referred to as the “Articles”).

19. The Articles state that they were authored by defendant Parlato.

20. Among other things, the 4/6/10 Article states:

. . . Do-nothing developer David Cordish. . .

* * *

Cordish and Guido, who rents from him an adjacent souvenir store, JD Gifts, have an interesting history together.

In August 2003, to fulfill a required development milestone for various giveaways Cordish got, Cordish claimed to have spent \$8.5 million – *including \$2 million in state tax money* – to partner with Guido and open

the Theater in the Mist, a small room with 60 seats inside Guido's gift shop, featuring a short film about the falls on a small screen.

Cordish maintains he put \$6 million of his own money into the project.

One suspects, however, that not only did he not put any of his own money into the project, *but may have siphoned off some of the \$2 million of public money, using various shill companies he controlled* to inflate the prices to construct the small theater that by all accounts could have been built for well under \$1 million.

Some sources suggest that Guido is well aware of the fictional nature of Cordish's investment and that the Parcel 4 lot is her payback.

* * *

(emphasis added). The 4/6/10 Article is attached hereto as **Exhibit A**.

21. Among other things, the 4/13/10 Article states:

* * *

There's more: the 4-D Theatre in the Mist attraction. Billing is as a new world-class attraction, *Cordish in 2003 got \$2 million from the state*, partly claiming he would invest \$6 million of his own money on what would eventually become a 60-seat theater inside Guido's JD souvenir and gift shop. . .

One suspects that Cordish not only did not put any of his own money into the project, but may have *siphoned off some of the \$2 million of public money* using various shill companies.

* * *

(emphasis added). The 4/13/10 Article is attached hereto as **Exhibit B**.

22. Both Articles are fabrications and contain false defamatory statements of fact concerning plaintiffs.

23. Neither of the plaintiffs, nor any entity which they owned or own an interest in, received any state or public funds (let alone \$2 million dollars) in respect of the Niagara Falls development project referenced in the Articles.

24. Likewise, defendants' statements that plaintiffs "may have siphoned off some of the \$2 million of public money using various shell companies" are premised upon the above false statement of fact and imply the accuracy thereof, and are equally false.

25. The defendants published and disseminated the Articles to third-parties locally and globally via electronic means, including but not limited to at www.niagarafallsreporter.com, and via paper newspaper print and distribution.

26. Defendant Parlato additionally published and disseminated one or both of the Articles globally and locally via electronic means at www.frankreport.com.

27. Internet searches of plaintiffs upon internet search engines also present and/or reveal such Articles.

28. The defendants are the parties responsible for making, publishing and disseminating the above false statements.

29. The defendants conduct and statements were undertaken with actual malice.

30. The defendants had knowledge of the falsity of their statements.

31. The defendants' statements were made with reckless disregard as to truth and falsity.

32. Defendant Parlato directly or indirectly holds an interest in one or more pay parking facilities in Niagara Falls, New York that compete with the parking lot referenced in the Articles.

33. The NF Reporter has a long history of defaming plaintiffs and in the particular Articles referred to in this action, defendant Parlato was motivated to discredit plaintiff in that plaintiffs had rejected him and/or entities under his control in respect of a possible business transaction which relates to the subject matter of the Articles.

34. The defendants' statements constitute libel *per se*.

35. The defendants' statements do, and were intended to, expose plaintiffs to public contempt, ridicule, aversion, induce an evil opinion of them and/or deprive them of friendly intercourse in society.

36. The defendants' statements do, and were intended to, injure plaintiffs in their trade, business and profession.

37. The defendants' statements do, and were intended to, impute fraud, dishonesty, and misconduct upon plaintiffs in their trade, business and profession.

38. No privilege exists in support of defendants' defamatory conduct.

39. The defendants have not retracted their statements despite demand.

40. Upon information and belief, the defendants' statements are not capable of proper and complete retraction.

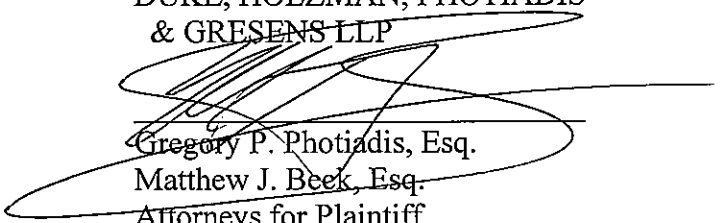
41. Plaintiffs have been damaged on account of the defendants' conduct and are entitled to recover joint and severally from the defendants: (1) damages in excess of \$2,000,000; and (2) punitive damages in amount to be determined at trial.

42. Plaintiffs additionally seek Court costs and legal fees in bringing this action.

WHEREFORE, plaintiffs request joint and several judgment against the defendants on their sole cause of action for: (1) damages in an amount in excess of \$2,000,000; (2) punitive damages in amount to be determined at trial; and (3) such other and further relief as this Court deems just and proper, including but not limited to legal fees and Court costs in bringing this action.

Dated: April 20, 2010

DUKE, HOLZMAN, PHOTIADIS
& GRESENS LLP



Gregory P. Photiadis, Esq.

Matthew J. Beck, Esq.

Attorneys for Plaintiff

1800 Main Place Tower

350 Main Street

Buffalo, New York 14202

(716) 855-1111

Exhibit A

In searching the publicly accessible web, we found a webpage of interest and provide a snapshot of it below. Please be advised that this page, and any images or links in it, may have changed since we created this snapshot. For your convenience, we provide a hyperlink to the current webpage as part of our service.

Niagara Falls Reporter OPINION

[<Home](#)

Niagara Falls Reporter

[Archive](#)

CORDISH TENANT GUIDO DEFIES CITY

By Frank Parlato Jr.

You have to admit it's brazen.

Do-nothing developer David Cordish, who acquired the lease to the Rainbow Centre mall in the heart of downtown Niagara Falls and let it sit idle and deteriorate for more than a decade, also acquired from the city a 275-by-150-foot vacant lot across from the mall.

Like the mall, it also remains vacant.

Once referred to as Parcel 4, it was a profitable parking lot for the city not too long ago. But then, along came the opportunist David Cordish.

In order to get Parcel 4 well below market value, Cordish promised a world-class development on the valuable downtown lot, even signing a contract with the city promising to build at least a 10,000-square-foot building on the Parcel 4 site.

But in what seems true to character, he never built anything.

A weak-kneed council later excused him from his obligation to build in return for his promise to develop, or more accurately to lease the property to people who actually would put money into it: the Flight of Angels helium balloon ride, which would be launched from the site.

After the approval, quite typically of Cordish, the balloon ride was cut down in scale and delivered less than was promised.

Still, it was something of an attraction even in its scaled-down form, but far less than what Cordish promised, a pattern Niagara Falls should know all too well from the out-of-town entrepreneur.

A few years later, the balloon ride ran completely out of gas — figuratively speaking, of course — and was grounded for good, giving Cordish another empty space to sit on, which he did. With his mammoth Rainbow Mall and the Parcel 4 lot, Cordish held two prime parcels — and they were non-producing vacant spaces.

Both properties are only a few hundred feet from the boundaries of Niagara Falls State Park, helping to make downtown look as if it were a ghost town to tourists.

Amazingly, he got both these properties from the city based on his promise to develop them.

So what is Cordish now doing with the Parcel 4 site?

He, or more accurately his tenant, Debbie Guido, is apparently turning it into a parking lot. Ironic. Cordish snatched it away from the city when it was a paid parking lot — where the people of this city got the profit — on the pretense that he was going to develop it into something better. Now it is going to revert to a paid parking lot, only this time Cordish and his partners get the profits, not the city.

Cordish and Guido, who rents from him an adjacent souvenir store, JD Gifts, have an interesting history together.

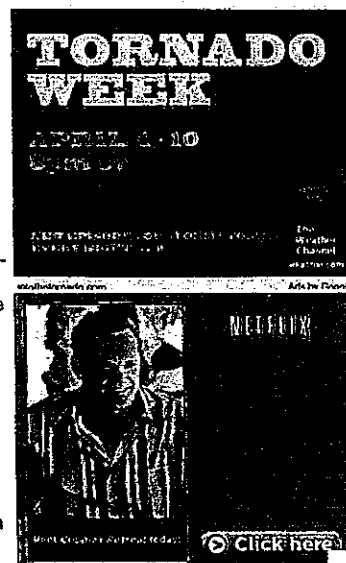
In August 2003, to fulfill a required development milestone for various giveaways Cordish got, Cordish claimed to have spent \$8.5 million — including \$2 million in state tax money — to partner with Guido and open the Theater in the Mist, a small room with 60 seats inside Guido's gift shop, featuring a short film about the falls on a small screen.

Cordish maintains he put \$6 million of his own money into the project.

One suspects, however, that not only did he not put any of his own money into the project, but may have siphoned off some of the \$2 million of public money, using various shell companies he controlled to inflate the prices to construct the small theater that by all accounts could have been built for well under \$1 million.

Some sources suggest that Guido is well aware of the fictional nature of Cordish's investment and the Parcel 4 lot is her payback.

In any event, Cordish leased the Parcel 4 lot to Guido for around \$45,000 per year with a provision that it is cancelable at any time.



Google maps

The map with restaurant reviews and menus in one place.

Search Maps

Look inside the pin



Now it gets a little murky.

Niagara Falls municipal law states there shall be no stand-alone paid parking lots. If you have a paid parking lot in Niagara Falls, you have to have some kind of attraction to justify charging people money to park there.

With several partners, including Over the Falls Tour company owner Rick Whitney, Guido went to the Niagara Falls Planning Board and City Planner Tom DeSantis and told them they were going to put in a carnival-type attraction with a ferris wheel and merry-go-round, with an attached paid parking lot for about 50 cars.

Guido told the planning board they would essentially split the property -- some for amusement, some for parking.

The planning board is a nine-member citizen board made up of Niagara Falls residents who are authorized to prepare and adopt a land use plan and other such plans affecting the general welfare of the city.

They approved Guido's plan earlier this year as presented.

But according to several sources, it appears Guido may not put any amusements there at all.

"The ferris wheel is out. As to the merry-go-round, they are going to get the smallest one they can get -- if they can find one small enough -- and stick it in the corner," said one person in the construction business familiar with the paving contract for the site. "They do not care if they sell one ride. They are building a parking lot."

Last Saturday, the Guido group, without a merry-go-round or any type of amusement attraction, started illegally parking on their unpaved lot.

They extended the paid parking lot portion over gravel and grass to nearly the very end of the lot, covering over the area with cars where the amusement rides were supposed to go.

Guido partner, Over the Falls Tours owner Rick Whitney, told business neighbors that he is going to park more than 100 cars every day on the lot.

Some took it with a grain of salt.

Over the Falls Tours has a checkered history at best.

According to affidavits filed in a lawsuit before State Supreme Court Justice Frederick Marshall, former Over the Falls salesman Jodie Ghianni said the company falsely reported their sales to their landlords and claimed they set up an elaborate system of cheating landlords out of their rightful commissions.

Over the Falls denied the allegations and the lawsuit was settled out of court. But the company has lost several big tour-selling booth locations they have leased over the years.

Whitney, who is a towering 6-foot-5, has garnered complaints about his personal conduct in the past. He was arrested in July 2007 by Niagara Falls police for allegedly striking a 5-foot-tall woman and was led away in handcuffs only a few feet away from the site of the Guido illegal paid parking lot.

Whitney claimed he did not strike the woman but only pulled her hat down over her head when she said something that angered him.

Whitney, who needs a license from the city to run tours out of the Cordish Parcel 4 property, told the Reporter that he would sell his tours there and openly defy plans filed with the city.

"We will park 125 cars at a time and turn them over three times a day," Whitney said to amazed listeners Saturday. "We will use almost our entire lot for parking."

Based on how they parked cars this past weekend, there appears to be not even a semblance of compliance with the site plan, supporting Whitney's statements.

Tom DeSantis, the city's planning chief, tried to work with Guido to create an attractive and viable amusement area in downtown Niagara Falls.

He and the planning board may have been deceived.

It will be up to the city inspection department, headed by Dennis Virtuoso, who is also a county lawmaker, to ensure compliance with the plans submitted to the city.

The real losers, however, seem to be the taxpayers. The city gave away a revenue-producing parking lot to Cordish on his promise that he would develop it into an attraction.

Instead, he appears to be making it a parking lot with Guido.

It may, however, be a blessing in disguise.

If Cordish doesn't require Guido to do what she promised, there may be enough push-back against Cordish to unhinge his hopes to sell or rent one-third of the Rainbow Centre to either the county or the city for the planned

Niagara County Community College culinary institute.

Cordish, as readers know, doesn't actually own the mall, but has a potentially voidable 75-year nearly rent-free lease from the city on this city-owned property.

The mall lease, if faced with a strong legal challenge, might be nullified since, like the Parcel 4 lot, Cordish had a contractual obligation to do something and he did not follow through, in open defiance of the agreement. Cordish is presently trying to get millions for subletting the lease, while already in violation of the terms of that lease.

The irony would be almost comical if it were not so unpalatable: The city owns the property and leases it to Cordish. Cordish is in violation of his lease with the city and pays almost no rent.

But now the city is talking about leasing from Cordish – for big money – their own property! It is almost as stupid as giving away a profitable public parking lot to Cordish so he can develop a parking lot and keep all the profits.

There may be a growing consensus that Cordish has taken enough from the people of Niagara County. County Legislator Vince Sandonato has already stated that Cordish is no partner to have on the culinary institute. Others may figure that out eventually, if not sooner.

Compared to the mammoth Rainbow Centre and what is at stake for Cordish, this \$45,000 lease with Guido means little.

But it looms now as a public relations nightmare if Guido and Whitney defy City Hall.

Stay tuned for more.

Niagara Falls Reporter

www.niagarafallsreporter.com

April 6, 2010

Exhibit B

me

Niagara Falls Reporter

[Archive>>](#)

GUIDO REBUTS WHILE CORDISH DECEIVES CITY

By Frank Parlato Jr.

Last week we reported on possible deception and, even further, a potential violation of law by cousins John and Debbie Guido and their partner, do-nothing developer David Cordish of Baltimore.

Apparently the Guidos did not like last week's article.

We reported that more than a decade ago Cordish acquired a 275-by-140-foot parcel of land that was once the city's most lucrative paid parking lot. Cordish the big-time developer persuaded City Hall officials not to waste such a choice parcel 300 feet from the Niagara Falls State Park for something as mundane as a parking lot, promising instead to develop a tourism attraction.

The Council, knowing he had developed big-time projects in other cities, gave him the lot. Cordish signed a contract that he would faithfully build at least a 10,000-square-foot building on the site, but he never did. Cordish later modified the deal with a promise to develop a major helium balloon attraction virtually out of "The Wizard of Oz."

Without one dime of his own money in it, Cordish then rented the lot to tenants who operated a greatly downscaled balloon ride. After five lackluster years, it went bust in 2006, leaving the lot vacant again.

This year Cordish, through his partner John Guido, went to the Niagara Falls Planning Board with a plan to install a ferris wheel and merry-go-round, along with a paid parking lot, thereby meeting the city's requirement for an attraction in order to charge for parking.



Niagara Falls, ON Hotel Deals
Just found on KAYAK

\$83.38 [^]	Sheraton On The Falls	★★★★☆
\$88.70 [^]	Doubletree Fallsview Resort & Spa by Hilton - Niagara Falls	★★★★☆
\$94.00 [^]	Sheraton Fallsview Hotel & Conference Center	★★★★☆
\$79.41 [^]	Courtyard Niagara Falls	★★★★☆
\$69.34 [^]	Crowne Plaza Niagara Falls - Fallsview	★★★★☆

[^] Prices found recently. Click for more info



www.laincanadicalnita.com

Ads by Google

One of Guido's associates, Rick Whitney, however, told the *Reporter* the plan is to double the parking lot in defiance of City Hall. Other sources said the Guidos are going to install undersized rides in order to make almost the whole site into a private paid parking lot, completing a fleece of the city.

First, the revenue-generating parcel is given away on a promise that was never fulfilled, and now a parking lot is back, only this time taxpayers don't receive any revenue, with the profits going to Cordish and Guido.



The city (or a citizens group) needs to look at all this and determine if all the failed promises give the city an opening to reclaim the parcel.

Nevertheless it's another link in the city's problematic history with Cordish.

In 1982, Cordish was given a 75-year lease for the city-owned Rainbow Centre property in return for his promise to develop and maintain it as a first-class mall. After 10 years, the mall fell into disrepair and is now entirely vacant. Cordish then claimed he would turn it into an entertainment complex if the city cut his rent to \$106,000 for the 282,000-square-foot mall. That's 45 cents a square foot, compared to the average rent for downtown property in Niagara Falls of \$10 a foot. If he paid fair market rent, Cordish would pay \$2.8 million per year.

He never built the promised entertainment complex.

Now the city is planning to buy back a third of Cordish's lease for the planned Niagara County Community College's culinary institute.

Elected officials are negotiating with Cordish to pay him millions for a third of the lease that should have been voided when he failed to keep his promises.

There's more: the 4-D Theatre in the Mist attraction. Billing it as a new world-class attraction, Cordish in 2003 got \$2 million from the state, partly by claiming he would invest \$6 million of his own money on what eventually became a 60-seat theater inside Guido's JD souvenir and gift shop. The theater shows a 15-minute film on a screen about the size of a large plasma TV.

Entrance, conveniently enough, is through Guido's souvenir store.

One suspects that Cordish not only did not put any of his own money into the

project, but may have siphoned off some of the \$2 million of public money using various shell companies.

The movie itself appears to be a homemade film about a woman who goes on some kind of discovery of the mysteries of the falls. The so-called living spirits are apparently clay figurines that move toward and away from the camera, trying to create an amateur 3-D effect. If you look hard, you might see the strings that hold them in the air. At odd times during the movie, water sprays up from tiny sprinklers in the floor, giving the audience the promised fourth dimension.

Like Cordish, Guido's history in the falls is disappointing.

Up until recently, Guido owned the Gray Line franchise for sight-seeing tours in Niagara Falls. His company was founded by his stepfather's cousin, Gene Guido, who was also a police detective.

In the mid-to-late '80s, Gene was involved in heated competition with Benjamin Tirabassi, who owned Bridal Veil Tours. It was not uncommon during that time for official street signs pointing to the falls to disappear. Tourists, unable to find their way, would be more likely to stop at Guido's roadside information stands, where salesmen were waiting to sell his tours.

Tour companies in competition with Guido also found their billboards painted over with arrows pointing away from their booths and toward Guido's tour centers instead.

In the summer of 1986, a firebomb exploded at an information center operated by Tirabassi. Another firebomb ripped through a tour booth operated by another tour operator, Alphonse Gavin.

Media attention became intense. Tirabassi told *The New York Times* the problem was Guido. Gavins added he did not want tourists accidentally killed by Guido. Mayor Michael O'Laughlin said there was not much anyone could do.

Soon after, the FBI began an investigation, and Guido found himself facing indictment for a number of offenses, including conspiracy with his salesmen, whom he paid in cash to evade income taxes. There are still those who say Guido informed on his own salespeople in order to avoid jail time. Many tour agents working for Guido were indicted on tax evasion charges. Most pleaded guilty to felony charges in return for probation and payment of taxes and penalties owed.

Later Guido wore a wire for the FBI and helped entrap a number of his personal friends.

After Gene died in 1998, the Gray Line bus tour company under John's management lost their ascendancy in the tour-bus business. This year, John lost their longtime franchise Gray Line. Sources say it was because he could not pay the \$65,000 annual franchise fee.

Based on a count of buses they own and the locations they staffed, their business declined from more than 60,000 seasonal tour passengers to under 30,000.

Many in the local tourism industry know that Guido's company owes close to \$1 million in delinquent rent and is in imminent danger of losing their best sales locations. At the state park, Guido owes an estimated \$40,000 for unpaid ticket vouchers at the Cave of the Winds. At the Maid of the Mist last year, the management suspended their voucher privileges for non-payment. Unlike every other local tour-bus company that uses vouchers to allow their customers to seamlessly board and ride the boat, Guido's tour-bus drivers embarrassingly had to stand in line and pay on the spot to get their customers on the Maid of the Mist boat. Facing the uncertainty of opening this season, Guido even rented the tour booth location inside their JD souvenir store to Over The Falls Tours and not their own company.

And there are myriad other irregularities we haven't the space to include in this edition.

In any event, the Guidos were not happy with our publication last week.

Given their family history we wondered what they might do.

On Friday, April 9, the *Niagara Gazette* published a letter to the editor from one Gina Redden criticizing One Niagara's management of its parking lot. One Niagara's president is the distinguished Tony Farina. And, as some readers know, I have a managing membership interest in the LLC that owns the property.

Ms. Redden's letter read in part: "Recently, I was in the city and parked my car in a two-hour parking zone bordering (the One Niagara parking) lot. I left my father in the car while I crossed the street to the Hard Rock Cafe and turned to find 12 lot attendants harassing my father. I crossed back as to inquire to the problem and was verbally accosted in a hostile manner by one of the attendants insisting that I move my car. I politely asked him not to yell at me using foul language and aggressive body language. I pulled forward to turn right ... I watched (as other) drivers ... were verbally abused by the same man who accosted me. ... I, for one, was horrified by the behaviors of those employees."

After Farina and I read the article, we were confused.

Twelve parking lot attendants surrounding an old man in his car? Swearing at an innocent woman? Wait a minute. We do not have 12 parking lot attendants. In the offseason, we have only three. Where did the other nine come from?

"I have investigated the complaint alleged by the letter writer," Farina told the *Reporter*. "I have questioned all of our lot attendants, and there is no shred of evidence or even a hint that such an event took place. We would not tolerate such conduct and would take immediate action to remove any attendants who acted improperly."

Our Web research showed Internet multiple references for Gina Redden of Wilson.

She also uses the name Gina Guido-Redden.

I called John Guido, who in between expletives and threats, admitted she was his relative.

Like I said, Guido did not like our report.

All we really reported was the truth.

Hope bombs do not go off through our windows next.

Stay tuned.

Niagara Falls Reporter

www.niagarafallsreporter.com

April 13, 2010